

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC
Plaintiff,

V.

TEXAS INSTRUMENTS, INC.
Defendants

§ Civil Action No. 6:12-CV-499 MHS

LEAD CASE

BLUE SPIKE, LLC,
Plaintiff,

V.

AUDIBLE MAGIC CORPORATION,
FACEBOOK, INC., MYSPACE, LLC,
SPECIFIC MEDIA, LLC,
PHOTOBUCKET.COM, INC.,
DAILYMOTION, INC.,
DAILYMOTION S.A., SOUNDCLOUD,
INC., SOUNDCLOUD LTD., MYXER,
INC., QLIPSO, INC., QLIPSO MEDIA
NETWORKS LTD., YAP.TV, INC.,
GOMISO, INC., IMESH, INC.,
METACAFE, INC., BOODABEE
TECHNOLOGIES, INC., TUNECORE,
INC., ZEDGE HOLDINGS, INC.,
BRIGHTCOVE INC.,
COINCIDENT.TV, INC., ACCEDO
BROADBAND NORTH AMERICA,
INC., ACCEDO BROADBAND AB,
AND MEDIAFIRE, LLC
Defendants.

Civil Action No. 6:12-CV-576 MHS

CONSOLIDATED CASE

BLUE SPIKE, LLC,
Plaintiff,

V.

WIOFFER, LLC
Defendant.

§ Civil Action No. 6:12-CV-570 MHS

CONSOLIDATED CASE

**DECLARATION OF SEAN AREND IN SUPPORT OF DEFENDANT AUDIBLE
MAGIC CORPORATION'S AND ITS CUSTOMERS' MOTION TO TRANSFER
VENUE TO THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. § 1404(a)**

I, Sean Arend, declare under penalty of perjury that the following is true and correct:

1. I am President of Metacafe, Inc. I have personal knowledge of the facts set forth in this declaration, or access to Metacafe, Inc.'s corporate information and records allowing me to confirm these facts. If called as a witness, I could testify competently to these facts under oath.
2. At the time this suit was initiated, Metacafe, Inc. ("Metacafe") was headquartered in San Francisco, California.
3. Metacafe never based any operations, employed any personnel, or owned or occupied any property in Texas.
4. The Metacafe products accused in the complaint in the above-referenced action incorporated Audible Magic technology accused in the complaint.
5. Metacafe entered into an agreement with Audible Magic, located in Los Gatos, California, permitting Metacafe to integrate Audible Magic's Content Identification Services into Metacafe's websites. This is the technology accused by Blue Spike in the instant action. The Content Identification Services provided to Metacafe were, at all times, managed by Audible Magic on its computer servers and in its network operations center in Los Gatos, California and San Jose, California.
6. Metacafe interacted with Audible Magic technical and business personnel in Los Gatos, California to obtain the agreement with Audible Magic and with regard to technical aspects of the Audible Magic technology. Metacafe employees that were responsible for entering into the agreement with Audible Magic are located in San Francisco, California.
7. As part of its agreement with Audible Magic, Metacafe utilized or accessed servers, databases, and software located in and/or originating from Audible Magic in Los Gatos, California.

8. Metacafe never had any access to, or ability to alter, Audible Magic's proprietary source code used to run Audible Magic's Content Identification Services.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based on my own personal knowledge.

Executed on May 6, 2013 in Denver, Colorado.

A handwritten signature in black ink, appearing to read 'Sean Arend', is written over a horizontal line.

Sean Arend